



27 DEC 2005

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In re Application of
Maecke et al.
Application No.: 10/533,906
PCT No.: PCT/EP01/05483
Int. Filing Date: 11 May 2001
Priority Date: 12 May 2000
Attorney Docket No.: 3025-107
For: Prochelators For The Preparation Of Radiometal
Labeled Molecules Having Improved Biological...

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: DECISION
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: ON
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: PETITION
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This is in response to the renewed petition to revive under 37 CFR 1.137(b) filed 29 November 2005.

DISCUSSION

In a decision mailed on 29 September 2005, the petition under 37 CFR 1.137(b) filed on 06 May 2005 was dismissed without prejudice because

Regarding requirement (3), applicant states that "the entire delay in entering the application into the National Stage from the due date for entry until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional and applicants herewith submit the papers and fees for entering this application into the National Stage." This differs from a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Moreover, this statement has only been made by one of the joint inventors (Prof. Dr. Helmut Maecke). In the absence of any statement or evidence concerning whether unintentional delay was present on the part of the other joint inventor(s), it would be inappropriate to consider the requirements of 37 CFR 1.137(b)(3) to have been satisfied.

The instant renewed petition is accompanied by statements of unintentional delay signed by Prof. Dr. Helmut Maecke, Klaus-Peter Eisenwiener and Pia Powell, as well as Rita Ziegler on behalf of the University Hospital, Basel, Switzerland. In view of these statements, requirement (3) has now been satisfied. Therefore, all of the requirements of 37 CFR 1.137(b) have now been satisfied.

The decision mailed on 29 September 2005 noted that

Inspection of the declaration reveals that it names a joint inventor, "Klaus-Peter" Eisenwiener, who is not named in the published international application, and that the published international application names a joint inventor, "Klaus" Eisenwiener, who is not named in the declaration. Since this discrepancy is clearly more than a mere typographic error or phonetic misspelling of applicant's name, a proper petition under 37 CFR 1.182 is required to resolve this matter. Such a petition must be accompanied by the \$400.00 petition fee and by verified statements by the inventors and any other individuals having first-hand knowledge

of the error. These statements must set forth in detail the specific circumstances as to how and when the error was made and discovered, and must also state (if appropriate) that the mistake was an inadvertent error made without deceptive intent.

Counsel explains that

Seemingly due to a clerical error, the second part of inventor's Eisenwiener's first name was omitted. However, Klaus-Peter Eisenwiener did, in the declaration submitted on May 6, 2005, declare that he, Klaus-Peter Eisenwiener, is the inventor of the international application. Applicants submit that this differs from a situation where a mistake as to the inventor's name was made in the inventor's declaration (MPEP §605.04(b)).

Counsel further argues that the inventors were named in the international application "for U.S. filing purposes." In this regard, counsel is advised that the given name of inventor Eisenwiener as of the filing of this application was listed as "Klaus," not "Klaus-Peter," and that the name listed in the declaration ("Klaus-Peter") therefore constitutes a change in the inventor's name. See 35 U.S.C. 363. Since this change is clearly more than a result of a mere typographical error or misspelling, the filing of a petition under 37 CFR 1.182 is appropriate, as noted in the previous Decision. Alternatively, applicants may file a new oath or declaration naming the same inventive entity as nominated in the published international application and which complies with all of the requirements of 37 CFR 1.497(a) and (b).

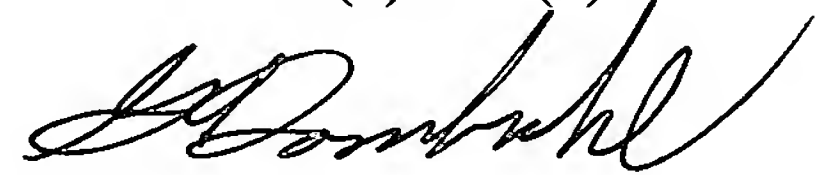
DECISION

The petition under 37 CFR 1.137(b) is GRANTED.

This application is being forwarded to the National Stage Processing Branch for the preparation and mailing of a Notification of Missing Requirements (Form PCT/DO/EO/905) requiring the submission of an oath or declaration compliant with 37 CFR 1.497(a) and (b).



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